IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 458.

EMANUEL E. LARSON,
Petitioner.

vs.

PACIFIC MUTUAL LIFE INSURANCE COMPANY,
Respondent.

On petition for Writ of Certiorari to the Supreme Court of the State of Illinois.

BRIEF AND ARGUMENT OF RESPONDENT, PACIFIC MUTUAL LIFE INSURANCE COMPANY, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FRANCIS X. BUSCH
ORVILLE J. TAYLOR
WHITNEY CAMPBELL
Counsel for Respondent.

McCORMICK AND HENDERSON, INC., CHICAGO

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To the Honorable, the Chief Justice, and the Associate Justices, of the Supreme Court of the United States:

Pacific Mutual Life Insurance Company, respondent to the petition of Emanuel E. Larson, petitioner herein, for writ of certiorari to the Supreme Court of the State of Illinois, in this matter, opposes the granting of such writ;

and in support of such opposition we respectfully submit the following brief and argument in its behalf.

OPINIONS BELOW.

The opinion of the Supreme Court of Illinois in this cause is reported in 373 Illinois at page 614. It is also set forth in full in the Transcript at page 201 to 209.

The Superior Court of Cook County, Illinois, filed no written opinion.

STATEMENT OF FACTS.

Since neither the petition nor petitioner's brief contain a concise statement of the facts of the case, we believe it desirable to set forth a brief outline of the important facts.

A complaint in chancery (Tr. 1 to 8) was filed August 11, 1936, in the Superior Court of Cook County, Illinois, by the petitioner, Larson, and others against The Pacific Mutual Life Insurance Company of California (old company), Chicago Title and Trust Company, North Shore Golf Club, and Pacific Mutual Life Insurance Company (new company), the respondent. The complaint alleged that each of the plaintiffs was the holder of a non-cancellable accident and health policy issued by the old company, a California insurance company (Tr. 2).

At the time this complaint was filed there was pending in the Superior Court of California, in and for the County of Los Angeles, a statutory insolvency proceeding against the old company instituted by the Insurance Commissioner of California pursuant to the California Insurance Code. The Insurance Commissioner of California had taken title to all assets of the old company as statutory conservator.

Pursuant to a plan of rehabilitation and reinsurance approved by the California court, and later reapproved after full hearing, the Insurance Commissioner of California had also organized the new company (respondent) and had transferred most of the old company's assets to the new company.

Among the assets transferred from the Insurance Commissioner as conservator to the new company was a mortgage note in the sum of $250,000 made by North Shore Golf Club. That note was in Illinois, being held in an escrow account at the Chicago Title and Trust Company (Tr. 6).

It was the theory of the complaint filed by the petitioner and others (a) that the rehabilitation proceeding in the California court and the agreement of rehabilitation and reinsurance approved by the California court were unconstitutional and void either in their entirety or at least as to the plaintiffs, (b) that the Superior Court of Cook County, Illinois, should appoint a receiver for the mortgage note physically present in Illinois, which had belonged to the old company but which had been transferred to the new company by the conservator in the rehabilitation proceeding, and (c) that the receiver so appointed should continue to hold said note and make collections thereon throughout the life of the policies held by the plaintiffs and employ the funds so created to satisfy the claims of the plaintiffs when and if claims might arise upon their policies.

The respondent filed several motions directed to the complaint as amended. Among these was a motion to dismiss the suit (Tr. 191) on the ground that the cause of action, if any, was barred by the order of the California court entered in the rehabilitation proceeding. An authenticated copy of the California order was filed with the motion (Tr. 111 to 149).

The order of the California court adjudged and decreed: that all parties in interest had been given reasonable and proper notice of the proceedings and a right and opportunity to be heard upon all matters therein adjudicated; that all policyholders, creditors and stockholders of the old company are, by representation or otherwise, parties to the proceeding and bound by the terms of the order; that the rehabilitation and reinsurance agreement makes adequate provision for each and every class of policyholders, creditors and stockholders, and does not discriminate unfairly against any class of policyholders, creditors or stockholders; that the old company was insolvent as of December 31, 1935, and as of July 22, 1936, within the purview of the Insurance Code of California; that the rehabilitation and reinsurance agreement and the plan embodied therein are fair, just and equitable; that the transfers of assets of the old company to the new company are approved; and that the rehabilitation and reinsurance agreement is approved and its execution by the Insurance Commissioner authorized and directed. The rehabilitation and reinsurance agreement was made a part of the order of the California court (Tr. 122 to 149).

We do not deem it necessary to burden the court with a statement of the plan of rehabilitation and reinsurance or with a statement of further facts relating to the California proceeding. Those facts have been before this court, and are reported in *Neblett* v. *Carpenter*, 305 U. S. 297, *Carpenter* v. *The Pacific Mutual Life Insurance Company of California*, 10 Cal. (2d) 307, and *Larson* v. *The Pacific Mutual Life Insurance Company of California*, 373 Ill. 614 (Tr. 201 to 209).

By the terms of the rehabilitation and reinsurance agreement, the respondent reinsured the policy of the petitioner

—and all other policies of the old company—subject to the payment of premiums to the respondent. Petitioner, however, elected not to pay premiums to the respondent. His policy thereby lapsed upon the books of the respondent (Tr. 38).

On July 3, 1939, the Superior Court of Cook County, Illinois, entered its order in this cause. By its order (Tr. 193 to 195) the court found that the petitioner and other plaintiffs were bound by the order of the California court and by the terms and conditions of the rehabilitation and reinsurance agreement embodied in the order of the California court. By its order the Superior Court of Cook County, Illinois, denied the petitioner's motion for the appointment of a receiver of the asset present in Illinois and sustained the respondent's motion to dismiss the suit on the ground that the cause of action, if any, is barred by the order of the California court. The trial court, however, attached a condition to its dismissal of the suit. It ordered the respondent to reinstate the lapsed policy of the petitioner upon the payment of all unpaid premiums, and it required the respondent to file a bond guaranteeing such reinstatement as a condition to the dissolution of temporary restraining orders previously entered.

Upon appeal by the respondent and cross-appeal by the petitioner, the Supreme Court of Illinois reversed those parts of the order of the Superior Court which directed the respondent to reinstate the lapsed policy of the petitioner and which imposed a bond requirement upon the respondent, and affirmed all other parts of the order (Tr. 209).

SUMMARY OF ARGUMENT.

The question decided by the Supreme Court of Illinois in this case was whether the public policy of Illinois authorizes a preferential payment to a local creditor of an insolvent foreign insurance company out of property located in Illinois. That was a question of local law which the Supreme Court of the United States will not review.

The only federal questions considered or involved in the decision of the Supreme Court of Illinois were the validity of the proceedings in the courts of California relating to the rehabilitation of The Pacific Mutual Life Insurance Company of California, and the application of the full faith and credit clause of the Federal Constitution. Those questions are not open to doubt in view of the decisions of this court in *Neblett* v. *Carpenter,* 305 U. S. 297, and *Clark* v. *Williard,* 292 U. S. 112, both of which decisions were followed.

ARGUMENT.

I.

THE QUESTION DECIDED BY THE SUPREME COURT OF ILLINOIS PERTAINS TO THE LOCAL LAW OF THE STATE OF ILLINOIS AND IS NOT A MATTER WHICH THE SUPREME COURT OF THE UNITED STATES WILL REVIEW.

This proceeding was brought by the petitioner and several other Illinois policyholders of a California insurance company in an effort to obtain an equitable attachment of assets in Illinois, through the appointment of a receiver, while a statutory insolvency proceeding was pending in the domiciliary state, in order that the petitioner and other plaintiffs might procure for themselves treatment perferential to that available to all other policyholders of the same class wherever resident. The petitioner seeks a review of a decision of the Supreme Court of Illinois denying him preferential treatment. Petitioner does not contend that he has been denied any right whatsoever that was accorded to other policyholders of the same class.

In *Clark* v. *Williard,* 292 U. S. 112, this court held that the question of whether attachments of this character shall have preference over the title of the charter liquidator is a question of local law of the particular state, and reasserted the familiar principle that the highest court of the state is the ultimate authority in the determination of the local law.

In that case this court said (292 U. S. at p. 123):

> "Whether there is in Montana a local policy, expressed in statute or decision, whereby judgments and attachments have a preference over the title of a charter liquidator is a question as to which the Supreme Court of that state will speak with ultimate authority."

In the same opinion the court said (292 U. S. at p. 129):

> "To resume: The Supreme Court of Montana will determine whether there is any local policy whereby an insolvent foreign corporation in the hands of a liquidator with title must submit to the sacrifice of its assets or to their unequal distribution by writs of execution."

When the *Clark* v. *Williard* case again came before this court (294 U. S. 211) the Supreme Court of Montana had determined that there was a state policy permitting preferences for local creditors. In again recognizing the final authority of the Supreme Court of Montana on the question of local law this court said (294 U. S. at p. 213):

> "Every state has jurisdiction to determine for itself the liability of property within its territorial limits to seizure and sale under the process of its courts."

Accordingly, the Supreme Court of Illinois in this case determined the public policy of Illinois by an examination of its statutes. It found a policy contrary to that of Montana. It found that the law of Illinois does not authorize preferential payments to a local creditor of an insolvent foreign insurance company out of property located in Illinois. After reviewing the principles of *Clark* v. *Williard*, the Supreme Court of Illinois said (Tr. 208):

> "The public policy of this State has been prescribed by legislative enactment. * * * There is no provision in any of the sections of the code which authorizes a preferential payment to a local creditor out of the property located in this State."

The Supreme Court of Illinois having expressly decided a question which this court has characterized as a question solely of local law, the petitioner is without standing in requesting this court to review that determination.

II.

THE ONLY FEDERAL QUESTIONS CONSIDERED OR INVOLVED IN THE DECISION OF THE SUPREME COURT OF ILLINOIS ARE NOT OPEN TO DOUBT IN VIEW OF THE DECISIONS OF THIS COURT IN NEBLETT V. CARPENTER, 305 U. S. 297, AND CLARK V. WILLIARD, 292 U. S. 112, BOTH OF WHICH DECISIONS WERE FOLLOWED.

The petitioner contended in the Supreme Court of Illinois and contends here that the California rehabilitation proceedings deprived him of his property without due process of law or impaired the obligation of his contract, in violation of his rights under the Federal Constitution.

These identical questions were considered by this court in *Neblett* v. *Carpenter,* 305 U. S. 297, which affirmed the decision of the Supreme Court of California in *Carpenter* v. *The Pacific Mutual Life Insurance Company of California,* 10 Cal. (2d) 307. In that case this court reviewed the California rehabilitation proceeding of which the petitioner here complains. The petitioners in *Neblett* v. *Carpenter* included several holders of non-cancellable accident and health policies of the old company, the very type of policy held by the petitioner here.

In *Neblett* v. *Carpenter,* this court held that the proceeding taken in California pursuant to the Insurance Code of California did not take the property of policyholders without due process of law, did not impair the obligations of their contracts, and did not contravene any of their rights under the Federal Constitution.

In disposing of petitioner's contention that the California proceedings were invalid under the Federal Constitution, the Supreme Court of Illinois treated the decision of this court in *Neblett* v. *Carpenter* as the conclusive authority. Furthermore, by reason of the fact that the California pro-

ceeding was a class suit, the Supreme Court of Illinois held that the orders affirmed by *Neblett* v. *Carpenter* were adjudications binding upon this petitioner (*Hartford Life Insurance Co.* v. *Ibs*, 237 U. S. 662, *Hartford Life Insurance Co.* v. *Barber*, 245 U. S. 146; *Royal Arcanum* v. *Green*, 237 U. S. 531).

Petitioner also asserts (petitioner's brief p. 6) that the California proceeding violated the equal protection clause of the Federal Constitution. He fails, however, to state any facts which present a question under that clause.

In his contentions regarding the validity of the California proceedings, the petitioner is asking this court to review and reverse the Supreme Court of Illinois because it followed the decision rendered by this court as to the same proceedings in *Neblett* v. *Carpenter*.

Throughout petitioner's brief it is also contended that the Supreme Court of Illinois should not have accorded full faith and credit to the California proceedings. Petitioner is not complaining of a denial of full faith and credit—but is complaining because full faith and credit was granted.

The application of the full faith and credit clause of the Federal Constitution to cases of this character was made plain by the decision of this court in *Clark* v. *Williard*, 292 U. S. 112. The principles of that case were not misconceived by the Supreme Court of Illinois. The Illinois court said (Tr. 208):

> "In *Clark* v. *Williard*, 292 U. S. 112, 78 L. ed. 1160, it was held that if one State has a public policy which permits a preferential payment to the local creditors of an insolvent insurance company, then the title of the liquidators appointed in the State of domicile is, as to the property in the other State, subordinated to the claims of the resident creditors of the latter State. If

> the public policy of the State be the opposite, then, as a necessary corollary, it would follow that the State courts must, under the full faith and credit clause, accord superiority of title to the statutory liquidator appointed in the State of domicile."

After determining that the law of Illinois does not authorize preferential payments to local creditors out of the local assets of an insolvent foreign insurance company, the Supreme Court of Illinois applied the principles of *Clark* v. *Williard* and held that full faith and credit must be given to the California proceedings (Tr. 209). The Supreme Court of Illinois could, of course, have given effect to the California proceedings as a matter of comity, even though it had not been obliged to do so under the full faith and credit clause.

In his contention under the full faith and credit clause, the petitioner is asking this court to review and reverse the Supreme Court of Illinois because it expressly followed the doctrine pronounced by this court in *Clark* v. *Williard*.

These are the only questions of federal law which were considered or involved in the decision of the Supreme Court of Illinois.

Among the many contentions made in the petition and the brief in support thereof is the contention that the determination of Illinois law made by the Supreme Court of Illinois deprives petitioner of some vested right to a preference, in violation of the Constitution of the United States (petitioner's brief, p. 12). In answer to that contention we deem it necessary to say only: (a) that no such contention was made in the Supreme Court of Illinois, and (b) that petitioner can have no vested right in a remedy.

Petitioner also asserts numerous violations of the Constitution of California and the Constitution of Illinois. These

contentions present no federal question and have been answered adversely to the position of the petitioner by the Supreme Court of California in *Carpenter* v. *The Pacific Mutual Life Insurance Company of California,* 10 Cal. (2d) 307, and by the Supreme Court of Illinois in this case.

CONCLUSION.

Neither the petition nor the brief in support thereof state any reason for a review of the decision of the Supreme Court of Illinois. The question decided was one of local law. In so far as questions of federal law were considered or involved in the decision such questions were decided in conformity with decisions of this court which were directly applicable thereto.

The writ of certiorari should be denied.

Respectfully submitted,

FRANCIS X. BUSCH
ORVILLE J. TAYLOR
WHITNEY CAMPBELL
Counsel for Pacific Mutual Life Insurance Company, Respondent.